Judgment 11/2008 **Shaham v (i) Lloyds TSB Offshore Treasury Ltd (Defendant) and (ii) Fooks (as Administrator of the Guernsey Estate of Dan Ron) – Royal Court (Civil Action File 862) – 20 March 2008**

Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 – form of Joint Account Authority did not operate as a <u>statutory</u> assignment of ownership of the funds in the account under s.2 of the law of 1979 – in enacting the Law of 1979 the States had made no provision for <u>equitable</u> assignment – power of Customary Law to evolve and be developed by the Courts of Guernsey – held however that this was not an omission which the Royal Court might now remedy (See Judgment 67/2005)

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil File 862

The 20th day of March, 2008 before Richard John Collas, Esquire, Deputy Bailiff alone:-

Between RACHEL SHAHAM Plaintiff

and

LLOYDS TSB OFFSHORE TREASURY LIMITED Defendant

and

CATHERINE MAUREEN FOOKS (AS ADMINISTRATOR OF THE GUERNSEY ESTATE OF DAN RON) Intervenor

Whereas on 17th March 2008 whilst giving legal directions to the Jurats in his summing up to them in the trial of this action and having heard submissions from Advocate R.I.C.E. Harris and N.J.Barnes counsel for the Plaintiff and Intervenor respectively, the Deputy Bailiff directed that the joint Account Authority in this matter did not operate as an assignment of the ownership of

the funds in the Account and reserved his reasons until after the Jurats had retired the Deputy Bailiff this day handed down the said reasons in the terms attached hereto.

M A TOSTEVIN
H M Deputy Greffier

Approved Text
20.03.08

IN THE ROYAL COURT OF GUERNSEY
(Ordinary Division)

Decision re assignment of Bank Account

Between	**RACHEL SHAHAM**	**Plaintiff**
	-v-	
	LLOYDS TSB OFFSHORE LIMITED	**Defendant**
	and	
	CATHERINE MAUREEN FOOKS (as Administratrix of the Guernsey Estate of Dr Dan Ron Deceased)	**Intervenor**

Handed down: 20th March 2008

Before: Richard John COLLAS Esq., Deputy-Bailiff

Advocate for Plaintiff: **R I C E Harris**
Advocate for Intervener: **N J Barnes**

Cases, Texts and Statutes referred to:

1. Section 2 of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979.
2. Morton (Formerly Champion) v Paint [1996] 21.GLJ. 61
3. C v DPP [1996] 1 AC1 HL(E)
4. R v Kearley [1992] 2AC 228

Introduction

1. These proceedings before the Royal Court concern a Bank Account held with the Defendant in Guernsey ("the Account"). The Account was originally opened by two Israeli citizens and residents, Mrs Mira Ron and her son Dr Dan Ron. Mrs Mira Ron died on 31st August 2002. The parties are agreed that Dr Ron then became the sole owner of the balance standing to the credit of the Account when his mother died. On 4th November 2002, Dr Dan Ron travelled to Guernsey with his housekeeper and friend, the Plaintiff, who

understood the purpose of the visit was to add her name to the Account, so it would thereafter be in the joint names of the Plaintiff and Dr Ron.

2. On 4th November 2002, Dr Ron and the Plaintiff met with Paul Samman, a Personal Accounts Manager of the Defendant and completed forms produced by him on behalf of the Bank; the first was entitled "*Joint Account Authority*"; and the second was entitled "*Personal Details for Additional Signatory*". There is a dispute as to what was said at that meeting and, in particular, whether Mr Samman, on behalf of the Bank, made it a condition of the transfer that certain documentation be produced, namely a copy death certificate for Mrs Mira Ron or her original death certificate or a certified copy of her death certificate (in order to remove her name from the Account) and whether or not he also asked for a utility bill, (to verify the Plaintiff's address). Those questions, among others, are to be decided by the Jurats having heard evidence in these proceedings.

3. The dispute arose because when Dr Ron died suddenly and unexpectedly in May 2003 the Defendant still held the Account in the names of Dr Ron and his late mother. The Plaintiff argues that the Account had, or should have, been transferred into the joint names of herself and Dr Ron during his lifetime and hence that it passed to her on Dr Ron's death, by way of survivorship.

4. On the other hand, the Intervener argues that the Account passed to his Estate because the conditions that, she says, were laid down by the Bank at the meeting on 4th November 2002, requiring the production of documents, had not been satisfied. That dispute will be resolved when the Jurats have made their determinations of fact.

5. Advocate Harris, on behalf of the Plaintiff, also pursued a second or alternative line of argument, namely that the Joint Account Authority, signed on 4th November 2002, was sufficient to assign the ownership of the funds in the Account to the joint names of Dr Ron and the Plaintiff, notwithstanding that the Bank never accepted the Plaintiff as its customer (if that is the finding of the Court).

6. When giving legal directions to the Jurats in my summing up to them, I directed that the Joint Account Authority did not operate as an assignment of the ownership of the funds in the Account and I announced that I would give reasons for that ruling after the Jurats had retired. These are my reasons.

7. The Joint Account Authority was completed by Dr Ron in his handwriting on 4th November 2002 and signed by him and the Plaintiff where appropriate. The form was left with Mr Samman at the Bank at the conclusion of their meeting.

8. When filling in the account details, Dr Ron completed the Account Title as "*Dr D Ron*", although the Account was still designated as being in the joint names of himself and his late mother. Nothing turns on that discrepancy, if it is a discrepancy, for the purposes of this decision.

9. The material part of the document on which Advocate Harris relies is Section 3.2 headed *"Signature of All Parties to the Account(s)"*. It states:

> *"Please add the person named in Section 3.1 to my sole/joint account(s) and treat these account(s) as joint accounts in accordance with the authority set out overleaf"*.

10. The authority set out overleaf, at Section 2 of the form, includes an instruction to act on any request signed by "*any one of us"* to *"withdraw or deal with any property or securities which you may hold for us from time to time"*. It also states, in paragraph 4:

> *"You may pay any existing or future credit balance in any account in our joint names to, or the order of, the survivor(s) of us, or to the Executors or Administrators of the survivor(s)".*

11. Advocate Harris argues that the instruction in Section 3.2 was twofold. First the Bank was instructed to add the Plaintiff to the Account. Second, it was to treat the Account as a joint account. That second instruction, he argued, acted separately, independently and additionally to the first instruction.

12. I accept that a credit balance in a bank account represents a debt due from the Bank to its customer. It is a chose in action, capable of being assigned in accordance with Section 2 of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979, sub-section 2(2) of which imposes two requirements:

> *"(a) The assignment is by writing under the hand of the assignor or any person authorised in writing by the assignor to act on his behalf; and*
>
> *(b) Express notice in writing of the assignment has been served on the debtor, trustee or other person on whom the assignor would have been entitled to claim the debt or other thing in action."*

13. I accept that the second of those conditions was satisfied. If the Joint Account Authority is an assignment, notice was given to the Bank when the form was completed in the presence of Mr Samman and thereafter left with the Bank. I had to decide whether, as a matter of law, the instruction in the second part of the sentence in Section 3.2 (quoted above) was an assignment. I agreed with Advocate Barnes' submission that it was not capable of acting as a conveyance or transfer of ownership of the monies in the Account into the joint names of the Plaintiff and Dr Ron if the Account opening formalities were not completed.

14. I noted first of all that the Joint Account Authority does not expressly mention the ownership of the funds in the Account.

15. I also took into account what I consider to be the object or purpose of the Joint Account Authority. The form was prepared by the Bank and, in my view, serves two principal purposes. First of all, it introduces to the Bank someone who wishes to become its customer. Or to put it another way, as the banking

relationship is contractual in nature, it introduces someone who wishes to enter into a contract with the Bank jointly with its existing customer in order to set up a new relationship which, Advocate Harris acknowledged, would be a new contract between, in this case, Mrs Shaham and Dr Ron on the one hand and the Bank on the other hand.

16. Secondly, the form advises the Bank who has authority to give instructions to withdraw money or deal with the Account. Depending on which of the two boxes is ticked, in paragraph 2 of Section 2 of the form, requests may be signed by any one of the joint account holders, or by all of them. Paragraph 4 also instructs the Bank to whom monies may be paid after the death of any one of the Account holders. It says:

> *"you may pay any existing or future credit balance …… to ….. the survivor of us"*.

17. As I have said, in my view, the form does not purport to advise the Bank as to who is the owner of the funds, let alone to transfer ownership from Dr Ron to the two of them jointly. If ownership was being transferred, I would expect a clear statement in terms that, for example, the survivor of the two joint account holders **shall** be the owner of the account. An instruction that the Bank **may** (my emphasis) pay the balance to the survivor falls short of what I would consider is required.

18. I therefore conclude that the Joint Account Application is not sufficient, by itself, to transfer ownership of the funds into their joint names.

19. Advocate Harris also sought to argue that the assignment could take effect by way of equitable assignment. The Plaintiff's case was originally pleaded, in paragraph 7.1 of the Cause, as an *"absolute legal assignment"*. During the hearing, and without objection from Advocate Barnes, the word "*legal"* was deleted.

20. Both Counsel agreed that a Guernsey Court has not previously been asked to consider whether equitable assignment exists under Guernsey Law. Advocate Harris argued that the Island's customary law had now evolved so as to incorporate equitable assignment. I asked Advocate Harris when he would submit that equitable assignment became part of Guernsey Law and he suggested it did so in 1979 upon the enactment of the Law of Property (Miscellaneous Provisions) (Guernsey) Law 1979 which introduced legal assignment, or at least removed any doubt as to the existence of legal assignment.

21. Customary Law can, and does, evolve and, throughout history, the courts of this Island have continually developed the law to meet new circumstances. Situations in which it is proper for the courts to do so were considered by the Guernsey Court of Appeal in *Morton (formerly Champion) v Paint [1996] 21.GLJ. 61* at page 54F to 55B. Southwell J.A. there quoted from the speech of Lord Lowry in *C v DPP [1996] 1 AC1 HL(E)*. He applied *R v Kearley [1992] 2AC 228* and the second of five "*aids to navigation across an*

uncertainly chartered sea" put forward by Lord Oliver of Aylmerton in that case:

> *"caution should prevail if Parliament has rejected opportunities of clearing up a known difficulty or has legislated, while leaving the difficulty untouched".*

22. Section 2 of the 1979 Law is expressed to have been made *"for the removal of doubt"* and so it is clear that the States were legislating for a known difficulty and they did so by copying provisions, similar, or very similar, to English Statutory Law. Even though equitable assignment was well known to English Law, the States made no provision for it. I therefore do not consider that it is open to me to hold that this was an omission by the States which the Royal Court may now remedy.

23. Having given that ruling to the Jurats, there is no need for them to find as a fact whether there had been an effective equitable assignment. Advocate Barnes argued that, for example, Dr Ron had not done all he could to perfect the assignment if he did not provide the documentation requested by the Bank (if it was requested) and that it is not the role of equity to complete what Dr Ron did not complete in his lifetime. The Jurats were directed by me that they do not need to consider whether that is so.

